

**Licence
Appeal
Tribunal**

12th Floor
1 St. Clair Avenue West
Toronto ON M4V 1K6

Tel (416) 314-4260 or
1-800-255-2214
Fax (416) 314-6307
(416) 314-4270
1-800-720-5292

**Tribunal
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12^e étage
1 ave St Clair O
Toronto ON M4V 1K6

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Télé (416) 314-6307
(416) 314-4270
1-800-720-5292



December 14, 2007

MEMORANDUM

Re: *Liliana Samarelli v. Registrar, Motor Vehicle Dealers Act*

Enclosed herewith please find a copy of the Decision of the Licence Appeal Tribunal with respect to this matter.

DISTRIBUTION LIST:

Liliana Samarelli, the Applicant
Michael Rothe, Counsel for the Respondent

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LILIANA SAMARELLI

APPEAL FROM A PROPOSAL OF THE REGISTRAR
UNDER THE *MOTOR VEHICLE DEALERS ACT*

TO REFUSE REGISTRATION

TRIBUNAL: DEREK ISRAEL, Vice-Chair

APPEARANCES: LILIANA SAMARELLI, appeared on her own behalf

A. MICHAEL ROTHE, Counsel, appeared on behalf of the
Registrar, *Motor Vehicle Dealers Act*

DATES OF HEARING: November 26, 2007 Toronto

REASONS FOR DECISION AND ORDER

BACKGROUND

This hearing arises out of a Notice of Proposal (the "proposal") issued by the Registrar, *Motor Vehicle Dealers Act* (the "Registrar" and the "Act", respectively), to refuse the registration under the Act of Liliana Samarelli ("Samarelli") as a salesperson. The Registrar bases his Proposal under section 7 and section 5.(1)(b) of the Act.

In support of his proposal to refuse Samarelli's registration, the Registrar has furnished the following reasons:

The intention and objective of the Act is to protect the public interest. The requirements of the Act include that Registrants be financially responsible in the conduct of business and that Registrants carry on business in accordance with the law and with integrity and honesty. The Registrant's past conduct is inconsistent with the intention and objective of the Act, and therefore warrants disentitlement to registration under the Act. Therefore, the Registrar is unwilling to register Liliana Samarelli under the Act.

The proposal also gave the following particulars in support of his reasons:

1. On or about May 28 2007, Liliana Samarelli ("Samarelli") applied for registration as a motor vehicle salesperson. She proposes to work for Blue Star Ford Lincoln Sales Ltd.
2. On the application to become a registered salesperson question 9 asks:

"Have you ever been found guilty or convicted of an offence under any law or are any charges pending? (This includes those instances where an absolute discharge has been ordered)".

Samarelli answered, "Yes", but failed to provide particulars of the offences.

3. A criminal record search revealed Samarelli has engaged in conduct which resulted in the following conviction(s):

January 31, 2000 Fraud under \$5000.00 (X2)

(Exhibit 4, Tab 1)

Subsequent to the issue of the above proposal, further information came to the notice of the Registrar as a result of which, he issued a Notice of Further and Other Particulars in which the following allegations appear:

NOW THEREFORE TAKE NOTICE THAT THE REGISTRAR REPEATS THE REASONS AS SET OUT IN THE NOTICE OF PROPOSAL DATED JUNE 27, 2007 AND IS PROVIDING THE FOLLOWING FURTHER AND OTHER PARTICULARS:

FURTHER PARTICULARS

It is further alleged as follows:

Paragraphs 1 and 2 of the Notice of Proposal dated June 27, 2007 are deleted and replaced with the following:

1. On or about May 25, 2007, Liliana Samarelli ("Samarelli") applied for registration as a motor vehicle salesperson. She proposes to work for Flue Star Ford Lincoln Sales Ltd.
2. On the application to become a registered salesperson question 9 asks:

"Have you ever been found guilty or convicted of an offence under any law or are any charges pending? (This includes those instances where an absolute discharge has been ordered)".

Samarelli answered, "No".

(Exhibit 4, Tab 2)

THE EVIDENCE

In addition to the documents filed as exhibits, the Registrar relied upon the oral testimony of Mary Jane South, the Deputy Registrar. The only other person to testify was Samarelli herself.

Mary Jane South

South testified that she is and has been the Deputy Registrar since 1997, and she explained that the Ontario Motor Vehicle Industry Council ("OMVIC") has been delegated with responsibility to administer the Act, which is a consumer protection statute enacted to protect the public. Her duties as Deputy Registrar are to oversee the

registrations of all dealers and salespersons, and ensure compliance with the Act and its regulations.

South reviewed the Notice of Proposal, the Notice of Further and Other Particulars, as well as the application for registration submitted by Samarelli and dated May 22, 2007 (Exhibit 4, Tab 4). South explained that in December 2006, a temporary registration had been issued to Samarelli, which was conditional for 60 days. At that time, Samarelli was working for a Mazda dealership. As is done routinely, a criminal background check was instituted regarding Samarelli and when the report of the police was received, a letter was sent by OMVIC to her, stating that the temporary registration was cancelled. The Mazda dealership was also informed of the cancellation. The Mazda dealership informed OMVIC that Samarelli no longer was with the dealership but that she had been told of the letter and its contents and that the dealership had received regarding the police report.

South went on to testify that in answer to question 9 on the application for registration which reads:

Have you ever been found guilty or convicted of an offence under any law or are any charges pending? (This includes those instances where an absolute discharge has been ordered). If yes, list all charges and/or convictions and the circumstances surround each (attach addition sheets if necessary).

Samarelli had answered "No", and had signed the application certifying that the information therein was true.

Samarelli then, on May 28, 2007, submitted a fresh application for registration (Exhibit 4, Tab 5), and in regard to question 9, which was the same question as in her prior application, she stated as follows:

I have a pardon completed last year to an offence over 7 years ago, which has no (Sic.) been removed from my record. I am currently investigating this matter to be cleared. The charge was against myself because it was my signature. I have not been charged for anything since.

South also referred the Tribunal to the CPIC report that OMVIC received from the Orillia Police, which stated that Samarelli had a criminal record as follows:

<u>DATE & PLACE</u>	<u>CHARGE</u>	<u>DISPOSITION</u>
JAN 31 2000 HAMILTON	FRAUD UNDER \$5000 SEC 380(1)(B)CC (2 CHGS)	SUSP SENT & PROB 3 YRS ON EACH CHG CONC

(Exhibit 4, Tab 6)

OMVIC requested that Samarelli give it details of the charges and conviction, and she replied by letter as follows:

AS PER OUR CONVERSTION I AM WRITING YOU TO INFORM YOU THAT THERE IS AN ITEM ON MY POLICE RECORD THAT HAPPENED OVER 7 YEARS AGO, I DO

NOT RECALL THE ACTUAL DATE OR YEAR IT WAS SO LONG AGO. THE CHARGE INVOLVED MY X-HUSBAND WHICH WAS USED WITH MY NAME AND CHEQUE THAT I HAD SIGNED, I TOOK THE RESPONSIBILITY FOR IT BECAUSE, TECHNICALLY IT WAS MY NAME AND MY SIGNATURE ON THE BLANK CHEQUE, I DID APPLY FOR A PARDON LAST YEAR AND I DID GET ONE BUT, IT DID NOT GET CLEARED AND THAT IS WHY I AM NOW TRYING TO DEAL WITH THE POLICE DEPARTMENT TO GET THIS CLEARED, MY DOCUMENTS ARE UNKNOWN AT THIS TIME ALONG WITH MY BIRTH CERTIFICATE EVEN THOUGH I DID SUBMIT IT WHEN I FIRST REGISTER LAST YEAR WITH YOU, I HAVE MOVED AND MY HOUSE IS PACKED INTO MY FIANCÉ'S GARAGE AND IT WILL TAKE A LONG PERIOD OF TIME TO GO THROUGH EVERY SINGLE BOX TO FIND IT, I HAVE NO DOUBT THAT I DO HAVE IT, ITS JUST WHERE? THE BOXES ARE TO THE CEILING OF THE GARAGE TO THE BACK, I AM IN THE MIDDLE OF MOVING AND THIS SITUATION COULD HAVE NOT COME AT A WORSE TIME, BUT, THEN AGAIN I DID NOT THINK THAT I WOULD HAVE TO DEAL WITH SITUATION BECAUSE, IT SHOULD HAVE BEEN CLEARED IN THE FIRST PLACE.. I HAVE NOT WORKED SINCE THE END OF LAST YEAR TILL MAY OF 2007, I HAD TO DEAL WITH MOVING AND STUDYING FOR MY COURSES TO BECOME A BUSINESS MANAGER WHICH I AM NOW SUCCESSFUL AT BLUE STAR FORD, NOW THAT I HAVE COMPLETED AND QUALIFIED. I ALSO STAYED HOME WITH MY STEP SON FOR A MONTH TO TAKE CARE OF HIM FOR HE HAD SURGERY IN HIS STOMACH, I WAS FULLY BEING SUPPORTED BY MY FINACE (sic.) WHO CONVINCED ME TO GO TO CLASSES AND MOVE AND TAKE CARE OF THE KIDS FOR A SHORT PERIOD OF TIME UNTIL I COULD QUALIFY FOR A BUSINESS MANAGER POSITION. I HAVE WORKED VERY HARD TO GET TO THIS POINT IN MY LIFE PURSUING A CAREER AND STARTING A NEW FUTURE WITH MY FUTURE HUSBAND, IT WOULD DEVASTATE MY FAMILY IF I WAS NOT GRANTED MY LICENCE THROUGH OMVIC BECAUSE OF AN OFFENCE THAT HAPPENED SO LONG AGO. THIS WOULD RUIN (sic.) MY MEANS OF LIVING AT THIS POINT FOR IT HAS BEEN DIFFICULT NOT WORKING FOR THE LAST 6 MONTHS, HOPING THAT MY POSITION HERE WOULD MOVE US FORWARD. PLEASE CONSIDER THIS LETTER AND CALL ME IF ANY CONCERNS TO ARISE. (Sic.)

(Exhibit 4, Tab 7)

At no time has OMVIC, according to South, received a copy of any pardon from Samarelli.

Liliana Samarelli

Samarelli stated that when she approached OMVIC for registration as a salesperson, she thought she had been pardoned and that she had no criminal record.

She spoke to a sergeant in the police at the beginning of 2006, and was told that she could apply for a pardon and following this advice, she paid the sum of \$40.00 to obtain the pardon. She has no receipt for this payment, but did receive a "paper" from the police in response to her application for a pardon, which paper stated at the top "discharge". She believed that this was her pardon, but found out in May 2007, that she still has a conviction registered against her.

In cross-examination, Samarelli stated that she has taken and passed OMVIC's Automotive Certification course in preparation for her registration and knows and understands that the application she submitted to OMVIC is the first test of honesty and

integrity. She also knows that the application form for registration was signed by the sponsoring dealer who confirmed that he has discussed Samarelli's response to each question with Samarelli. She also appreciates that a dealer relies upon what is stated in the application when sponsoring such applicant.

Samarelli confirmed having been convicted as stated in the CPIC report, and that the first time she disclosed this to OMVIC was in her application to OMVIC.

In response to counsel's question as to why she answered "NO" to question 9 in her application, she stated that she had been told by the police sergeant to answer that way and had also been told to so answer when she asked the receptionist at OMVIC. Samarelli stated that she spoke to the police sergeant regarding the pardon, which she told him she had received, and the sergeant then told her if she had a pardon, she should answer "NO". The receptionist at OMVIC who she told that she had received a pardon, told her also to answer "No".

It was, according to Samarelli, between May 25 and May 28, 2006, that she was informed by OMVIC that she had no pardon,

She went on to state that she has no receipt for the \$40.00 she paid for her pardon and brought no document with her to show that she has a pardon, but she knows she has such a paper for which she has unsuccessfully searched. In reference to her letter (Exhibit 4, Tab 7), she conceded that she made no reference or disclosure therein of the police sergeant's advice to her nor, in that letter, did she make any reference to having had a discussion with an OMVIC employee and what that employee advised her to do in relation to her answer to question 9 of her application. Furthermore, she conceded that nowhere in her notice of appeal did she mention that she had sought advice and received advice from a police sergeant or OMVIC employee before answering "no" to question 9. She again stated that she can produce no documentation that she has in fact received a pardon.

FACTS FOUND PROVEN

The Tribunal has found the following facts to have been proven.

1. Samarelli in her application dated May 22, 2007, for registration as a salesperson under the Act, falsely answered question 9 by stating that she had not been found guilty or convicted of an offence under any law.
2. Samarelli was charged with and was found guilty of two charges of fraud under \$5,000 in terms of section 380 (1)(b) cc and such convictions took place on January 31, 2000.
3. Samarelli has failed to produce to this Tribunal any document or evidence that she has been granted a pardon in respect of her above conviction.

THE LAW

The Motor Vehicle Dealer Act states as follows:

5. (1) An applicant is entitled to registration or renewal of registration by the Registrar except where,

- b) the past conduct of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty; or

6. (1) Subject to section 7, the Registrar may refuse to register an applicant where in the Registrar's opinion the applicant is disentitled to registration under section 5

7. (1) Where the Registrar proposes to refuse to grant or renew a registration or proposes to suspend or revoke a registration, the Registrar shall serve notice of the proposal, together with written reasons therefor, on the applicant or registrant.

(2) A notice under subsection (1) shall state that the applicant or registrant is entitled to a hearing by the Tribunal if the applicant or registrant mails or delivers, within fifteen days after service of the notice under subsection (1), notice in writing requiring a hearing to the Registrar and the Tribunal, and the applicant or registrant may so require a hearing.

(4) Where an applicant or registrant requires a hearing by the Tribunal in accordance with subsection (2), the Tribunal shall appoint a time for and hold the hearing and, on the application of the Registrar at the hearing, may by order direct the Registrar to carry out the Registrar's proposal or refrain from carrying it out and to take such action as the Tribunal considers the Registrar ought to take in accordance with this Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of the Registrar.

APPLICATION OF THE LAW TO FACTS

The onus of proof rests on the Registrar to satisfy the Tribunal that he has reasonable grounds to believe that the registration of Samarelli ought to be refused based upon the past conduct of Samarelli affording reasonable grounds of belief that she will not in the future carry on business in accordance with honesty and integrity and with law.

The Tribunal is required to make an independent decision as to whether the criteria for denying Samarelli registration have been proven, showing no deference to the decision of the Registrar.

Based upon what was stated in the matters of *Brenner 19 CRAT S.C.O. Decision and Order ((71-1989) page 59*, issued on April 7, 1983, and *Shine Car Sales and Omar Hassan Rahim*, a decision of the Superior Court of Justice (Divisional Court) heard on February 11, 2003, the issue is whether or not, on the evidence, Samarelli's past conduct persuaded the Tribunal on a balance of probabilities that she will not, in the future, act in accordance with law and with honesty and integrity.

There are two issues in this matter that require consideration and these are:

1. was Samarelli on January 31, 2000, convicted on two counts of fraud under \$5, 000, section 380 (1) (b) cc, and;
2. did Samarelli falsely answer a material question in her application for registration.

An analysis of these two issues follow.

The CPIC report (Exhibit 4, Tab 6), clearly records the above conviction against Samarelli. In her testimony before this Tribunal, she did not deny such conviction, but contended that she had been granted a pardon and had been led to believe by two persons, one a police officer and the other an OMVIC employee, that she need not disclose in her application that she had been found guilty and convicted on the two charges of fraud.

Samarelli produced no documentation or other evidence that she had been granted a pardon. She was unable to produce a receipt or document that she had paid the required amount to the authorities for the granting of a pardon. She could not produce the pardon claiming that she was unable to find it despite having searched for it. She has made no effort to obtain a copy of the pardon from the authorities.

Samarelli's first application for registration was made by her on May 22, 2007 (Exhibit 4, Tab 4). In that application, she made no reference to either a conviction or a pardon (question 9). When enquiries were made by OMVIC on receipt of this first application, it appeared to OMVIC that Samarelli did have a conviction for fraud and she was asked for an explanation. She then filed a second application for registration with OMVIC dated May 28, 2007 (exhibit 4, Tab 5). Here, for the first time she mentioned a pardon and conviction (question 9).

Based upon all the facts, the Tribunal does not find Samarelli's evidence to be credible and her testimony did not have the ring of truth. Despite having taken and passed OMVIC's Automotive Certification course which dealt, among other things, with the requirements of all applicants and registrants to maintain honesty and integrity, Samarelli was not honest in her answer to question 9 on her May 22, 2007 application. The answers by any applicants to questions asked in applications for registration are the first test as to an applicant's honesty and integrity. Her patently false answer to question 9 in the May 22, 2007 application, shows, in the Tribunal's opinion, that Samarelli failed this first important test.

A single criminal conviction can be sufficient to found a reasonable belief that the Applicant will not carry on business in accordance with law, and with honesty and integrity. Such was the case in a Tribunal matter *Hanover Auto Wreckers Ltd. and Harold Roy Steeb*, heard by Vice-Chair Gordon R. Dryden on February 6 and 7, 1996,

as well as in the matter of *Herman Motor Sales et al (1980) 19 CRAT SCO Decision and Orders 128*. In each of those cases, the Registrar's proposal was upheld, notwithstanding the Applicant's previous good record and lack of criminal convictions.

The Tribunal is not entitled to go behind the criminal conviction and as the Tribunal is not entitled to look behind the conviction of Samarelli, it gives no weight to the protestations of innocence made by her in her testimony that she was not really guilty, the true guilty party being her ex-husband.

The Tribunal is of the further opinion that Samarelli's attempt to gain admission as a salesperson in the motor industry was accompanied by deception and that she refuses to accept responsibility for her actions. She finds it convenient to blame others. This is illustrated in her maintaining that her ex-husband was the guilty party in her criminal charges and conviction and that she pleaded guilty so as to shield him. She blames the authorities for failing to record that she had been pardoned when no such pardon has been shown to exist on the evidence placed before the Tribunal. She also alleges to having been advised by a police officer and an OMVIC employee that it was they that told her that it was not necessary to disclose her conviction.

Even if the Tribunal were to accept and find that Samarelli did obtain a pardon (which is not the finding of the Tribunal), it is clear that a pardon does not preclude reliance by the Registrar upon convictions against an individual (*Steinberg (re) [1994] O.C.R.A.T.D No. 134*, released on October 7, 1994). Further, the wording of question 9 in applications for registration is clear and to the point. Such question unambiguously deals with a finding of guilt or conviction and in no way refers to pardons.

In summary, the Tribunal finds that Samarelli was convicted and found guilty of the two criminal charges as contained in the CIPC report; that she failed to disclose these convictions in her application for registration and thereby made a false statement in answer to question 9 of that application; that her failure to disclose the criminal conviction was intentionally withheld by her from the Registrar; that she withdrew her first application when confronted by OMVIC with her conviction; and that she submitted a second application to OMVIC wherein for the first time, she claimed to have been granted a pardon.

Based upon the above findings, the Tribunal concludes that Samarelli's past conduct, taken in its totality, affords reasonable grounds for belief that she will not in the future carry on business in accordance with law and with integrity and honesty and that she should not be permitted registration in the industry.

DECISION

Accordingly, pursuant to the authority vested in it by Section 7. (4) of the *Motor Vehicle Dealers Act*, the Tribunal directs and orders the Registrar to carry out his proposal dated October 29, 2007, to refuse the registration of Liliana Samarelli as a salesperson under under the Act.

LICENCE APPEAL TRIBUNAL

Derek Israel
Vice-chair

RELEASED: December 14, 2007

FILE NAME: 4289.mvda.Samarelli.doc

The hearing was recorded. Transcripts can be made available at your expense. The period to appeal a decision to the Superior Court of Justice or Divisional Court is 30 calendar days from the date of release of the decision. Please arrange to pick up your Exhibits within 30 days after that period has passed. The Tribunal requires seven days notice prior to releasing Exhibits.

This decision, which is being released to the parties in this proceeding, will also be posted on the Licence Appeal Tribunal's website www.lat.gov.on.ca in three weeks time. The decision will also be available on Quicklaw at a later date.